

¹ 5 U.S.C. § 8101 *et seq.*

left knee while deployed in Afghanistan. He was last exposed to the conditions identified as causing his condition on December 31, 2012, the date of his voluntary retirement.

Appellant received treatment for various conditions at the employing establishment's clinic from January to November 2012. On February 29, 2012 he related a history of knee and back pain after slipping on the ice in the middle of February. On March 14, 2012 a provider diagnosed suspected patellar tendinitis. Another provider noted the history of onset as two months prior after a fall on ice.² On November 27, 2012 a physician's assistant evaluated appellant for foot pain that began the day before while walking on rocks. He diagnosed plantar fasciitis.³

In a health history dated April 9, 2013, appellant noted that he was seeking treatment for a work-related knee injury that occurred when he was deployed in Afghanistan from 2011 to 2012.⁴

On April 30, 2013 OWCP requested that appellant submit additional information, including a medical report from his attending physician addressing how work activities caused or aggravated a diagnosed condition.

In a report dated May 8, 2013, appellant was evaluated for problems with both lower extremities.⁵ He was diagnosed with joint effusion of the left leg, osteoarthritis of the knee and internal derangement of the knee.

In a statement dated May 8, 2013, appellant related:

"When I deployed to Afghanistan I had no problem walking or with my left knee or my feet. Now it is a daily struggle and I now walk with a limp. I been getting injections to my knee to help with the pain from the pounding of the rock and the issued boots during my deployment. My leg and feet are not the same when I deployed."

By decision dated June 17, 2013, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that he sustained left knee osteoarthritis, left knee derangement and plantar fasciitis of the left foot due to the established work factors.

² It is not clear whether any of the medical care providers are physicians.

³ On March 18, 2013 appellant received corticosteroid injections in the left knee.

⁴ In a statement dated April 11, 2013, Derrick Martin Jackson, a coworker, indicated that appellant was in Afghanistan from September to December 2012. During this time he had to occasionally assist "lift[ing] vinyl flooring that weighed in excess of 350 pounds." Mr. Jackson noted that appellant experienced pain and loss of mobility due to a foot injury and stated, "He ached and some days I released him early to give his body time to heal." In another statement dated April 11, 2013, Albert D. Granby, Sr. related that appellant had to walk in rocky and muddy areas and that he "oftentimes complained that the rocky surface or rocks that were used throughout the base was harming his feet. It was obvious to me that this was creating a great discomfort to his lower extremities and feet."

⁵ The physician is not identified.

On July 11, 2013 Dr. Randolph P. Jones, who specializes in preventive medicine, provided a one-page handwritten note. He diagnosed plantar fasciitis and bilateral knee strain. He attributed the diagnosed conditions to appellant's "activities while on his job deployment from February 2012 to December 2012." Dr. Jones opined that appellant's conditions resulted from work duties.

On July 12, 2013 appellant requested a review of the written record by an OWCP hearing representative. In a decision dated November 21, 2013, an OWCP hearing representative affirmed the June 17, 2013 decision.

On appeal appellant maintains that he did not have any problems until he went to Afghanistan. His knee problems began with the snow and his plantar fasciitis began after he walked in his boots on rocks. Appellant submitted new medical evidence with his appeal.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁹ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;¹⁰ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹¹ The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

⁶ *Supra* note 1.

⁷ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *See Alvin V. Gadd*, 57 ECAB 172 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁹ *Michael R. Shaffer*, 55 ECAB 386 (2004).

¹⁰ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

¹¹ *D.D.*, 57 ECAB 734 (2006); *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹² *Id.*

ANALYSIS

Appellant alleged that he sustained left foot, left knee and shoulder conditions due to the performance of his work duties when deployed in Afghanistan. OWCP accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

Appellant submitted reports from the employing establishment's medical clinic regarding his treatment from January to November 2012. On February 29, 2012 he received treatment for knee and back pain after he fell in the middle of February. On March 14, 2012 a medical care provider diagnosed possible patellar tendinitis while another noted a history of onset after a fall on ice two months before. On November 27, 2012 a physician's assistant diagnosed plantar fasciitis and noted that the foot pain began when appellant walked on rocks the previous day. The reports of a physician's assistant are entitled to no weight as a physician's assistant is not a "physician" as defined by section 8101(2) of FECA.¹³ Further, the reports do not specifically discuss the cause of any diagnosed condition and thus are of diminished probative value on the issue of causal relationship.¹⁴

Although a May 8, 2013 report revealed that appellant was evaluated for bilateral lower extremity symptoms and contained a diagnosis, the author could not be identified as a physician. As such, the report does not constitute medical evidence and is of no probative value.¹⁵

On July 11, 2013 Dr. Jones diagnosed plantar fasciitis and bilateral knee strain as a result of appellant's "activities while on his job deployment from February 2012 to December 2012." He did not, however, discuss the particular job duties that resulted in the diagnosed conditions or provide any rationale for his opinion. The opinion of a physician supporting causal relationship must be based on a complete factual and medical background, supported by affirmative evidence and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established work factors.¹⁶

On appeal appellant alleges that he began having knee problems due to walking in snow and plantar fasciitis due to walking in his boots on rocks while working in Afghanistan. He has the burden of proof, however, to submit reasoned medical evidence sufficient to meet his burden of proof. An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.¹⁷ He must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into

¹³ See 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁴ See *A.F.*, 59 ECAB 714 (2008); *K.W.*, 59 ECAB 271 (2007).

¹⁵ See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁶ See *Robert Broome*, 55 ECAB 339 (2004).

¹⁷ *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁸ Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

Appellant submitted new medical evidence with his appeal. The Board has no jurisdiction to review new evidence on appeal.¹⁹ Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a left knee, shoulder or left foot condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, *supra* note 16.

¹⁹ *See* 20 C.F.R. § 501.2(c)(1).